Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

_____TERM_____

NO. 78-832

WILLIAM LORAIN EVANS III, PETITIONER

V.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND REQUEST FOR SUMMARY REVERSAL

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VS.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI
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AND REQUEST FOR SUMMARY REVERSAL

Petitioner, William Lorain Evans III, moves that a Writ of Certiorari issue and requests Summary Reversal of the Judgement of the United States Court of Appeals for the Fifth Circuit rendered in these proceedings on July 27, 1978.

OPINION BELOW

The opinion of the U. S. Court of Appeals for the Fifth Circuit is unreported

and appears at Apendix A hereto. No opinion was rendered by the U. S. District Court for the Northern District of Texas, Ft. Worth Division.

JURISDICTION

The judgement of the U. S. Court of Appeals for the Fifth Circuit was entered on June 13, 1978. A timely petition for rehearing was denied on July 27, 1978. This Petition for Certiorari was filed within thirty days of that date. This Court's jurisdiction is invoked under 28 USC 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Whether a charge of falsifying a government document can be sustained when no such document nor authorized substitute was ever entered in evidence?

2. Whether a charge of "false and fraudulent" can be sustained when no evidence of damage to the Plaintiff was offered and no showing was ever made that Defendant owed any income taxes for 1976?

3. Whether the statuatory element of "willful" in 26 USC 7205 mandated that the prosecution prove beyond a reasonable doubt that Defendant knew prior to his acting that information given was false and fraudulent?

4. Whether a good faith constitutional challenge of a federal statute can be ignored by the Court of Appeals?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States, Amendment 5:

"No person shall..be deprived of life, liberty, or property, without due process of law..."

Constitution of the United States, Amendment 10:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

5 USC 552A (e) (3):

"Inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority...

(B) the principal purpose...

(C) the routine uses...

(D) the effects on him, if any of not providing all or any part of the requested information;"

26 USC 7205:

"Any individual required to supply information to his employer under Section 3402 who willfully supplies false or fraudulent information..."

STATEMENT OF FACTS

William Lorain Evans III, was indicted on Feb. 16, 1977, on one count of supplying false and fraudulent information by claiming 99 exemptions on U.S. Government "Form W-4" in 1976 in violation of 26 USC 7205. This

is not a tax evasion case. There was no evidence that any income taxes were owed the government by Evans in 1976. There was no evidence that Evans willfully supplied any false or fraudulent information. The "Form W-4" Evans was charged with filing does not exist nor does any authorized substitute. Evans was actually prosecuted on a Bell Helicopter Co. (his employer) computer form card and on a Bell Helicopter Co. computing symbol.

Evans proceeded pro se after his motion for counsel of choice was repeatedly denied by the trial Court and after he had tried to engage a lawyer acceptable to both himself and the Court but was not successful. He was further denied his choice of assistance of counsel during the trial after he was forced to proceed pro se.

No evidence was entered to show that Evans had any income tax liability for the year in question, 1976.

Mr. Kayo Rankin, head of the payroll department at Bell Helicopter Co., testified repeatedly during the trial that the form which Evans had signed was a Bel Helicopter Co. computing form printed for Bell use only. He stated that no government Form W-4's or W-4E's were ever used by Bell. He further testified that the number "99" found at the bottom of the Bell form signed by Evans was a Bell Helicopter Co. computing symbol meaning "exempt" (Govt. Ex. 5). He stated that this symbol was known and understood by the payroll department to mean exempt and was not understood to mean a claim for 99 exemptions.

REASONS FOR GRANTING THE WRIT

1. The government was required to enter into evidence that government "Form W-4" charged in the indictment or an authorized substitute with the claimed fraudulent information thereon. Govt. Ex. 5 is neither.

Title 5 USC 552A requires certain pri-

vacy disclosure information be supplied with any government form that requests information from a citizen. This information must be on the form or on a separate form supplied with the first form. The fact that this information is contained on both the government Form W-4 and Form W-4E for 1976 is proof that the Internal Revenue Service recognizes that it must comply with the law in regard to its forms. No such disclosure information exists on the Bell Helicopter Co. form (Govt. Ex. 5). Mr. Rankin testified that no such information was supplied either verbally or written with the Bell form when it is given to an employee.

Since no government withholding form or authorized substitute exists in evidence, the Bell Helicopter withholding and information thereon must be construed only in light of Bell Helicopter payroll procedures.

As noted in the Statement of Facts

the number "99" as used by Bell's payroll department is a computer symbol meaning "exempt". Since the government offered no evidence to show a tax liability for Evans for 1976, it did not disprove his claim of exempt status for 1976. The charge of false and fraudulent cannot be sustained.

There are two fatal variances between the indictment and the evidence at trial. There was no Form W-4 or authorized substitute offered in evidence. The number "99" was a computer symbol and not a claim for 99 exemptions as charged.

Section 3402(f) (5)-1 of 26 USC allows an employer to substitute a form "...the provisions of which are identical with those of the prescribed form." The trial Court committed reversable error when it instructed the jury that the provisions of the Bell Helicopter form and the government Form W-4 were substantially the same. Since the term "substantially the same" does not mean the

same as "identical", the trial judge in effect changed the meaning of the law for the jury.

2. The Government must prove beyond reasonable doubt intent to deceive or mislead with resulting damage to the government to sustain a charge of "false and fraudulent". In reRosenfeld,C.C.A.N.Y. 262 F 876-879; U.S. v Snider,502 F2d 645,650,651 (4 Cir. 1974); Heindel v U.S., 150 F.2d 493 (6 Cir. 1945); U.S. v Lange, 528 F2d 1282 (1976).

The evidence at trial showed that both Defendant and Bell Helicopter payroll department understood that the number 99 on the Bell form (Govt. Ex.5) was a claim of exempt status and not a claim of 99 exemptions. The government did not show evidence of tax liability for 1976 nor show any damage to the government. No deception or intent to deceive was shown. There is, therefore, no proof beyond a reasonable doubt that the information was

"false and fraudulent".

The trial judge committed reversable error when he gave to the jury an improper definition of "false" after Defendant required the Court to take judicial notice under Rule 201 of F.R.C.P. of the long accepted definition of the term.

3. The prosecution must prove that Evans had prior knowledge that the information supplied was false to sustain the charge of willful. The term "willful" in a criminal statute always embodies bad purpose or evil motive and requires prior knowledge. Wilson v U.S.,C.C.A. Cal. 156 F.2d 433,435; Bowles v Jung, D.C. Cal., 57 F. Supp. 701,709; U.S. v Palermo, C.A. Pa., 259 F.2d 372,881,882.

The only purpose testified to at trial for the computer symbol "99" was to stop withholding. The government did not show beyond a reasonable doubt that Defendant was not entitled to stop the with-

holding for 1976. The Government did not show that Defendant owed any income taxes for 1976. Therefore, no bad purpose or evil motive was shown beyond a reasonable doubt.

4. The Fifth Circuit Court of Appeals must give a ruling in law to a good faith constitutional challenge of a federal statute. The Circuit Court denied Evans due process of law when it called his challenges frivolous without supporting such a charge with law. This they did not do. Defendant cited numerous court cases including U.S. Supreme Court decisions to support his challenges. He also included extensive definition of terms. No flaw was noted by the Court in Defendant's arguments. The only case cited by the Court did not address either challenge (McMullen v U.S., W.D.Tenn., 1977 A.F.T.R.2d 77-628). The Court must show in law where the challenges are in error or it deprives Defendant of due process.

CONCLUSION

The judgement below conflicts in principle with numerous holdings of this Court and is an abrupt departure from Due Process of Law established by the Constitution and carried by this Court for 200 years. Therefore this Petition for a Writ of Certiorari should be granted and Summary Reversal should be entered.

In the event that this Petition is not granted, Defendant moves this Court to stay the Mandate pending a review by this Court of an Appeal of at least eight issues timely submitted to the Court.

Respectfully submitted,

William Lorain Evans III, Pro se

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit and Request for Summa-

ry Reversal have been mailed on Oct. 5, 1978 to Mr. R. H. Wallace, Jr., Assistant U. S. Attorney, U. S. Court House, 10th and Lamar Streets, Fort Worth, Texas, 76102, and that one copy has been mailed on the same date to the Solicitor General, Department of Justice, Washington, D.C., 20530.

William Lorain Evans III

Two additional copies have been mailed to the Solicitor General, Department of Justice, Washington, D.C. 20530 on Nov. , 1978.

William Lorain Evans III

APPENDIX A, OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, DATED JUNE 13, 1978,

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE,

V.

WILLIAM LORAIN EVANS, III,
DEFENDANT-APPELLANT.

No. 77-5342
SUMMARY CALENDAR.*

JUNE 13, 1978

DEFENDANT WAS CONVICTED BEFORE THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, ELDON B. MAHON, J., OF SUPPLYING A FALSE AND FRAUDULENT STATEMENT ON AN INTERNAL REVENUE SERVICE FORM W-4 SUBMITTED TO HIS EMPLOYER, AND HE APPEALED. THE COURT OF APPEALS HELD THAT: (1) CONTENTIONS THAT THE CONSTITUTION DOES NOT AUTHORIZE CONGRESS TO ENACT CRIMINAL PENALTIES ON TAXATION MATTERS AND THAT WITHHOLDING SYSTEM FOR TAXES IS PROHIBITED BY THE BILL OF ATTAINDER CLAUSE WERE FRIVOLOUS, AND (2) DEFENDANT LACKED STANDING TO OBJECT THAT RECORDS SUBMITTED AT TRIAL WERE OBTAINED FROM HIS EMPLOYER UNDER AN ADMINISTRATIVE SUMMONS RATHER THAN BY SUBPOENA OR SEARCH WARRANT.

AFFIRMED.

1. INTERNAL REVENUE

CONVICTION OF SUPPLYING A FALSE AND FRAUDULENT STATEMENT ON AN INTERNAL REVENUE SERVICE FORM W-4 SUBMITTED TO DEFENDANT'S EMPLOYER WAS NOT REQUIRED TO BE REVERSED ON GROUND THAT PROOF SHOWED FALSIFICATION OF A FORM SUPPLIED BY THE EMPLOYER WHILE INDICTMENT CHARGED FALSIFICATION OF AN IRS FORM.

26 U.S.C.A. (I.R.C.1954) § 7205.

2. Constitutional Law

Internal Revenue

Contentions that the Constitution does not authorize Congress to enact criminal penalties on taxation matters and that withholding system for taxes was prohibited by Bill of Attainder clause of the Constitution were frivolous and did not require reversal of conviction of supplying a false and fraudulent statement on an Internal Revenue Service form W-4 submitted to the employer. 26 U.S.C.A. (I.R.C.1954) § 7205.

3. Internal Revenue

Defendant, charged with supplying a false and fraudulent statement on an Internal Revenue Service form W-4 submitted to his employer, lacked standing to object that records submitted on trial were obtained from his employer through an administrative summons rather than by subpoena or search warrant.
26 U.S.C.A. (I.R.C.1954) § 7205.

4. Criminal Law

Trial court's questioning of witnesses did not require reversal where such questioning was pertinent to material facts and was not prejudicial.

Appeal from the United States District Court for the Northern District of Texas.

Before Goldberg, Ainsworth and Hill, Circuit Judges.

PER CURIAM:

Defendant William Evans filed an "Employee's Withholding Exemption" certificate with his employer Bell Helicopter on May 27, 1976. On this certificate he claimed ninety-nine exemptions despite the fact that he claimed only four exemptions on his 1975 federal income tax return. Evans was subsequently indicted for supplying a false and fraudulent statement on an Internal Revenue Service Form W-4 submitted to his employer in violation of 26 U.S.C. § 7205. Evans was found guilty following a jury trial and he was sentenced to one year imprisonment. On this appeal Evans raises numerous objections to his conviction: 1) the proof at trial which showed the falsification of a form supplied by his employer varied from the indictment which charged falsification of an Internal Revenue Service Form W-4; 2) the evidence was insufficient to show that the form was falsely and fraudulently completed; 3) the evidence was insufficient to prove that any false statement was wilfully supplied; 4) the trial court denied Evans of his right to counsel of his choice at arraignment; 5) the trial court denied Evans his right to counsel of his choice at trial; 6) the Constitution does not authorize Congress to enact criminal penalties on taxation matters; 7) preassessment of taxes under the withholding system is an unconstitutional bill of attainder; and 8) the trial court committed reversible errors during the course of the trial.

1.2 This Court has recently considered other cases involving defendants who made false and fraudulent statements on tax withholding forms. The defendants in those cases raised as error contentions similar to contentions 1, 2, 3, 4, and 5 in this case. See United States v. Moore, 5 Cir., 1978, 569

F.2D 1312; UNITED STATES V. SPARLIN, 5 CIR., 1978, 569 F.2D 1314; UNITED STATES V. STEPHENS, 5 CIR., 1978, 569 F.2D 1372; UNITED STATES V. CARTER, 5 CIR., 1978, 568 F.2D 453; UNITED STATES V. ARLT, 5 CIR., 1978, 567 F.2D 1295. OUR ANALYSIS OF THE CIRCUMSTANCES IN THOSE DECISIONS EXPLAINS WHY EVANS' SIMILAR CONTENTIONS ARE WITHOUT MERIT. IN ADDITION, WE CONCLUDE THAT THE CONTENTIONS THAT THE CONSTITUTION DOES NOT AUTHORIZE CONGRESS TO ENACT CRIMINAL PENALTIES ON TAXATION MATTERS AND THAT THE WITHHOLDING SYSTEM FOR TAXES IS PROHIBITED BY THE BILL OF ATTAINDER CLAUSE OF THE CONSTITUTION ARE FRIVOLOUS. SEE MC MULLEN V. UNITED STATES, W.D. TENN., 1977, 39 A.F.T.R.2D 77-628.

3,4 WE ALSO FIND THAT THE ALLEGED IRREGULARITIES AT THE DEFENDANT'S TRIAL ARE NOT GROUNDS FOR REVERSAL. EVANS LACKS STANDING TO OBJECT THAT RECORDS ADMITTED AT HIS TRIAL WERE OBTAINED FROM HIS EMPLOYER THROUGH AN ADMINISTRATIVE SUMMONS RATHER THAN BY SUBPOENA OR SEARCH WARRANT. SEE FISHER V. UNITES STATES, 425 U.S. 391, 96 S.CT. 1569, 48 L.ED2D 39 (1976). THE JURY INSTRUCTIONS GIVEN BY THE TRIAL JUDGE ADEQUATELY STATED THE LAW RELEVANT TO THE DEFENDANT'S CASE, SEE, E.G., UNITED STATES V. MARCHESE, 2 CIR., 1971, 438 F.2D 452; PINE V. UNITED STATES, 5 CIR., 1943, 135 F.2D 353, CERT. DENIED, 320 U.S. 740, 64 S.CT. 40, 88 L.ED. 439 (1943). THE QUESTIONING OF WITNESSES BY THE TRIAL COURT WAS PERTINENT TO MATERIAL FACTS AND WAS NOT PREJUDICIAL TO THE DEFENDANT. SEE UNITED STATES V. DELAUGHTER, 5 CIR., 1972, 453 F.2D 908, CERT. DENIED, 406 U.S. 932, 92 S.CT. 1769, 32 L.ED.2D 135 (1972). FINALLY, THE COMMENTS OF THE COURT AND THE PROSECUTOR DID NOT CONSTITUTE PREJUDICE REQUIRING REVERSAL.

AFFIRMED.

* RULE 18, 5 CIR.; SEE ISBELL ENTERPRISES, INC. V. CITIZENS CASUALTY CO. OF NEW YORK ET AL., 5 CIR. 1970, 431 F.2D 409, PART I.

Supreme Court, U. S.
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No. 78-832

In the Supreme Court of the United States

OCTOBER TERM, 1978

WILLIAM LORAIN EVANS, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-832

WILLIAM LORAIN EVANS, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner seeks review of his conviction for making a false and fraudulent statement on a withholding exemption certificate supplied to his employer, contending that the evidence was insufficient.

After a jury trial in the United States District Court for the Northern District of Texas, petitioner was convicted of making a false and fraudulent statement on a withholding exemption certificate (Form W-4) submitted to his employer, in violation of 26 U.S.C. 7205. The court sentenced him to a one-year prison term. The court of appeals affirmed *per curiam* (Pet. App.).[1]

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[1]The judgment of the court of appeals was entered on June 13, 1978. A petition for rehearing was denied on July 27, 1978. The petition for a writ of certiorari was filed on October 10, 1978, and is therefore substantially out of time under Rule 22(2).

The evidence showed that during the period from July 1972 to October 1976 petitioner was an employee of Bell Helicopter Company (Tr. 24, 26). On June 30, 1972, petitioner filed a withholding exemption certificate with his employer and claimed two exemptions. Petitioner thereafter filed a second withholding exemption certificate on May 27, 1976. On this second form, petitioner crossed out the printed statement on the form indicating that the taxpayer's submissions were made under penalties of perjury and claimed 99 exemptions and allowances for withholding tax purposes. These 99 exemptions and allowances eliminated all withholding of any taxes from petitioner's wages (Tr. 32-33).

During the period in question, Bell Helicopter used its own withholding exemption form. Pursuant to its practice, Bell extracted the relevant information from the IRS Form W-4 and placed it on card stock paper for easier filing (Tr. 33). Unlike the IRS form, the Bell form did not contain any withholding tax tables or instructions on how to use them, nor did it contain any Privacy Act (5 U.S.C. 552a) information (Tr. 37-39). However, the Bell form contained all information necessary to compute withholding taxes (Tr. 43). The Bell Helicopter payroll department used the figure "99" as a computer code to signify that no taxes would be withheld from the wages of any employee who was exempt from taxation. Generally, such employees were those on overseas assignment. In such a case, the withholding exemption certificate of the overseas employee was not changed. Rather, the payroll department used the figure "99" in its computer records to indicate exempt withholding status (Tr. 40-41, 47-49, 150). During the period in question, petitioner never worked outside of the United States for Bell Helicopter (Tr. 25).

Petitioner's 1975 income tax return showed income taxes withheld of $2,741.60, and a claimed refund of $927.54, or an income tax liability of $1,814.06 (Tr. 94-95). He claimed four exemptions and $3,900 in itemized deductions (Tr. 132-133).

An employment tax specialist, qualified as an expert, testified for the government that, based on his 1975 return, petitioner was entitled to seven exemptions and allowances for withholding purposes in 1976. Petitioner's 1976 withholding deductions could not exceed those claimed for 1975, except for determinable itemized deductions (Tr. 132-134). The amount of itemized deductions needed to justify the 99 withholding exemptions and allowances claimed by petitioner totalled $72,913 (Tr. 113-116).

The chief accountant of Kirk Mayer Engineering Services, for which petitioner began work in October 1976, testified that petitioner filed a Form W-4E in which he stated that he incurred no tax liability in 1975 and anticipated no tax liability for 1976. As a result of petitioner's filing of this form, Kirk Mayer withheld no taxes from petitioner's salary (Tr. 52-55).

During the summer of 1976, John Wang, an employee of Bell Helicopter, received some literature from petitioner entitled "Tax Revolt—Conclusion" (Tr. 59-63). On page 4 of this pamphlet, the statement appeared that "The purpose of filing a W-4E, or 99 allowances, is to prevent withholding" (Tr. 63). At petitioner's invitation, Wang attended a tax protest meeting, at which petitioner was also present. Comments were made at the meeting that the income tax was used to support communism and abortions and that "not filing income tax" was a way to help America (Tr. 65-66).[2]

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[2]Wang subsequently claimed 99 withholding exemptions in order to prevent withholding. However, he filed a corrected form after talking with the investigating revenue agent (Tr. 65).

1. Petitioner contends (Pet. 6-9) that he could not be convicted under 26 U.S.C. 7205 because he submitted a withholding exemption certificate made by Bell Helicopter that was not identical to the official Internal Revenue Service Form W-4. He points to the fact that the Bell Helicopter form does not contain any information required by the Privacy Act of 1974 (5 U.S.C. 552a) or any withholding tables or instructions on how to use the tables.

Section 3402(f)(5) of the Internal Revenue Code of 1954 provides that "Withholding exemption certificates shall be in such form and contain such information as the Secretary or his delegate may by regulations prescribe." Section 31.3402(f)(5)-1 of the Treasury Regulations on Employment Taxes (1954 Code) (26 C.F.R.) states in part: "In lieu of the prescribed form, employers may prepare and use a form the provisions of which are identical with those of the prescribed form." Bell used their own form because the IRS form was incompatible with their filing system (Tr. 33, 151). Both forms require information as to the employee's name, home address, social security number, marital status, and the number of exemptions or allowances claimed, together with the jurat providing that the declarations of the form are made under the penalties of perjury.

The provisions that petitioner complains were absent from the Bell Helicopter form are not essential parts of the withholding form itself. Instead, they are merely instructions on how to complete the form, and notice to the employee of the authority under which the information is solicited, whether disclosure of the information is mandatory or voluntary, the purpose for which the information is to be used, the routine uses which may be made of the information, and the effects, if any, on the person requested to supply the information resulting from a failure to supply the information (5 U.S.C. 552a(e)(3)).

Thus, while it was not identical to the IRS form in every respect, the Bell form provides all of the information to enable the employer to withhold taxes properly. Since the pertinent provisions of the Bell form and the IRS form were identical, the Bell form complies with Section 3402(f)(5) and the Regulations. *United States* v. *Arlt*, 567 F. 2d 1295 (5th Cir., cert. denied, 436 U.S. 911 (1978).

2. Petitioner further contends (Pet. 8-11) that the evidence was insufficient to show that the Form W-4 he submitted to his employer was false and fraudulent. He argues that the number "99" was a computer symbol to indicate tax-exempt status and not a claim of 99 exemptions as charged, and that since the government offered no evidence to show that he incurred any tax liability for 1976, it did not refute his defense of exempt status for that year.

But the evidence showed that petitioner filed a claim of 99 exemptions and that he used this number to conform with Bell's practice to use the figure "99" to indicate exemption from withholding. Petitioner cannot invoke Bell's practice as an excuse for his own misconduct when the elimination of his withholding taxes was triggered by his own false statement.

To support a conviction, the government was only required to show that petitioner claimed more than the proper number of exemptions at the time he filed the withholding exemption certificate, so that the form he submitted was false and fraudulent. 26 U.S.C. 3402(f)(2)(B). There was ample evidence to support this conclusion. Petitioner's 1975 tax return showed that for that year he claimed four exemptions and $3,900 in itemized deductions. Expert testimony established that, based on his 1975 tax return, petitioner was entitled to a maximum of seven withholding exemptions, and that more than $72,000 in additional itemized deductions would have been necessary to claim 99 exemptions (Tr.

113-116, 132-134). From this evidence, the jury was entitled to find that petitioner could not reasonably have expected to have $72,000 in additional deductions and that he was not entitled to claim 99 exemptions.[3]

3. Finally, petitioner errs in contending (Pet. 10-11) that the evidence of willfulness was insufficient to support his conviction. The evidence established that petitioner signed a withholding exemption form which recited that he had incurred no tax liability for 1975, when, in fact, he had paid more than $1,800 in taxes. The evidence also showed that petitioner distributed "tax protester" literature urging the claiming of 99 exemptions to stop withholding and attended meetings at which such illegal acts were encouraged. This evidence was more than ample to show willfulness, which this Court has defined as a voluntary, intentional violation of a known legal duty. *United States* v. *Pomponio*, 429 U.S. 10, 11-13 (1976). See also *United States* v. *Moore*, 569 F. 2d 1312 (5th Cir. 1978).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1979

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[3]Petitioner contends (Pet. 9) that the government failed to show that form submitted was false and fraudulent because there was no proof that it suffered "damage" as a result of the deception. There is no such requirement. The government need only show that the taxpayer supplied false information with the intent to interfere with the withholding system and prevent the collection of taxes in the manner prescribed by law. See, *e.g.*, *United States* v. *Hinderman*, 528 F. 2d 100, 102 (8th Cir. 1976); *United States* v. *Smith*, 484 F. 2d 8, 10 (10th Cir. 1973), cert. denied, 415 U.S. 978 (1974). See also *United States* v. *Malinowski*, 472 F. 2d 850, 859 (3d Cir.), cert. denied, 411 U.S. 970 (1973).